

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

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for March 31, 2004 PLANNING COMMISSION MEETING

**P.A.S.:** Change of Zone #04014

**PROPOSAL:** To amend the conditions under which alcohol is allowed to be sold in the B-2 and B-5 zoning districts to include the following:

1. Makes the sale of alcohol in the B-2 and B-5 districts a conditional use, and eliminates City Council authority to waive the yard, parking location, and door opening location requirements.
2. The B-2 side yard separation will be 50' where the building containing the licensed premises abuts a residential district.
3. Off-street parking will not be allowed within 50' of the side or rear property lines where the building containing the licensed premises abuts a residential district.
4. The licensed premises will be at least 100' away from a day care facility, church, state mental health institution, park (not including trail) or residential district unless there is an intervening exterior wall, in which case it will be measured along the base of the building to the door.
5. Any exterior door facing a residential district must be more than 150' away from the residential district as measured by the most direct, perpendicular distance.
6. Define the exterior door opening as any door used for public or membership access, but to not include emergency doors or loading doors that are not used for public access.
7. Vehicle stacking for a drive-thru window shall not be located in any required building setback from a residential district.
8. There shall be no amplified outside noise sound or noise source within 150' of a residential district.

**CONCLUSION:** The treatment of alcohol sales in the zoning code has been different in the B-2 and B-5 districts from the non-downtown, historically commercial districts in that alcohol sales is a permitted use outside of the required separation distance from residential zoning districts. Development in these two districts is also subject to stricter landscape/screening requirements, deeper building setbacks, and site plan approval, and the nature of development patterns in the newer areas where these two districts are located generally provides less opportunity for intrusion of commercial activity into residential areas. These differences justify different treatment of alcohol sales in these two districts from the new regulations adopted by the City Council. The applicant's proposed amendments trade off a reduction of the 100' separation requirement

with the addition of parking areas as well as buildings that are subject to the proposed 50' separation, and adds conditions to alcohol sales uses that meet the separation requirement which are not applicable today. In addition, the amendments would delete current language in the zoning code that still allows the City Council to waive (by "mitigation") the separation requirements in the B-2/B-5 districts, which is consistent with the intent that led the City Council to remove a similar provision that applied to the other non-downtown commercial districts.

<b>RECOMMENDATION:</b>
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Conditional Approval
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**GENERAL INFORMATION:**

**RELATED APPLICATIONS: CZ#04003** - A text amendment to Sections 27.63.680 and 27.63.685 of the Zoning Ordinance relating to the sale of alcoholic beverages for consumption on and off the premises. This application was approved by the City Council on March 15, 2004.

**UP#89B** - An amendment to Use Permit #89 - Pine Ridge, to allow the sale of alcoholic beverages for consumption on the premises less than 100' away from a residence and a residential district. Submitted by the same applicant as this text amendment, it was placed on pending by the Planning Commission at their 10/2/02 hearing.

**ANALYSIS:**

1. The Zoning Ordinance regulates the sale of alcohol depending upon the district as follows:
  1. On-sale is allowed by special permit in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 districts.
  2. Off-sale is allowed by special permit in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, and I-3 districts.
  3. On and off-sale are allowed as permitted uses in the B-4 district.
  4. On-sale is allowed in residential districts where such use is an accessory use to a golf course or country club.

5. On-sale in a restaurant is allowed by special permit as part of a use permit in the O-3 district provided the locational requirements of 27.63.680 are met or waived by City Council.
6. On and off-sale alcohol are allowed as permitted uses in the B-2 and B-5 districts provided the locational requirements of 27.63.680 are met or are waived by City Council.
2. During the February 18, 2004 Planning Commission public hearing, Kent Seacrest stated that he felt a distinction could be made between B-2/B-5 and the other districts that allowed the sale of alcohol. Because they are use permit districts, he felt that adequate mitigation was already built into the process by way of increased setbacks, landscaping, and area requirements. He went on to note however, that in spite of the heightened development standards, any request in the B-2 or B-5 that did not provide the required 100' separation was still subject to Council approval. This request addresses concerns raised by Mr. Seacrest, and only modifies the conditions under which alcohol sales are allowed in the B-2 and B-5 districts.
3. A comparison between the current, applicable requirements from LMC for the B-2 and B-5 districts and the proposed amendments are as follows:

**LMC Requirements:**

A. Setbacks -

	Front	Side	Rear
<b>B-2</b>	50'	20' when abutting residential	50' when abutting residential
<b>B-5</b>	50'	100' when abutting residential	100' when abutting residential

B. Off-street parking is not allowed in the front or side yards of either district, but is permitted within the rear yards of both.

C. The 100' separation is measured from the nearest point of the licensed premises.

D. The definition of an access door which must be more than 150' away from a residential district also includes loading and unloading doors.

E. Required screening includes a 60% screen from 0' to 10' in height along the property line. Required landscaping includes four trees and 400 square feet of shrubs for every 10,000 square feet of floor area.

**Proposed Amendment:**

A. Setbacks from the premises where alcohol is sold -

	Front	Side	Rear
<b>B-2</b>	50'	50' when abutting residential	50' when abutting residential
<b>B-5</b>	50'	100' when abutting residential	100' when abutting residential

B. Off-street parking is not allowed in the front, side, or rear yards of either district.

C. The 100' separation is measured from the exterior door opening unless there is an intervening wall, in which case the distance is measured from the door along the base of the building (see attached Exhibits A-D).

D. The definition of an access door which must be more than 150' away from a residential district includes only those doors that provide public or membership access, and not loading and unloading doors (see attached Exhibit E)

E. No change to the screening or landscaping is proposed. However, the additional restriction on parking in the rear yard means this area will typically be left as green open space.

4. If approved, the following impacts would be considered more restrictive:

A. City Council's authority to waive conditions would be eliminated.

B. Parking would not be allowed within 50' of the rear property line in B-2.

C. The side yard separation in the B-2 would be increased from 20' to 50' when abutting a residential district, with no parking allowed within 50' of the side property line. Additionally, no parking would be allowed within the rear yard in the B-5.

The following would be considered less restrictive:

- A. The 100' separation would be measured from the nearest point of the licensed premises unless there is an intervening wall, in which case the distance is measured from the door along the base of the building.
  - B. Loading and unloading doors will not be required to be at least 150' away from a residential district.
- 5. The applicable screening and landscaping standards were designed to promote compatibility with surrounding uses, and only apply to B-2 and B-5 when adjacent to a zoning district of substantially different character.
  - 6. The minimum site area for B-2 is five acres, and thirty acres for B-5. The B-2 and B-5 commercial centers are generally found at major intersections, and the buildings are oriented towards major streets and away from surrounding residences. These factors prevent the situation often encountered in the older neighborhoods, where the commercial districts are small and lacking depth. It also ensures there is adequate area to maintain screening and landscaping, and that buildings and traffic are oriented towards major streets and away from residential uses.
  - 7. As noted previously, CZ#04003 was approved by the City Council. It included a substitute ordinance that refined the definition of park to exclude golf courses and hiker/biker trails. This request should be amended to contain language consistent with that ordinance.
  - 8. This request was presented to the Mayor's Neighborhood Roundtable at their March 11, 2004 meeting.

**CONDITIONS:**

- 1. Change "DEDICATED CITY OR COUNTY PARK LAND" to "PARK (EXCLUDING GOLF COURSES AND HIKER/BIKER TRAILS)" throughout the proposed ordinance.

Prepared by:

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Planner

March 3, 2004

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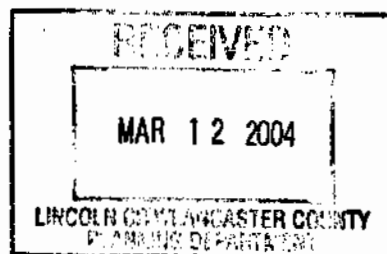
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March 12, 2004

Marvin Krout  
Planning Department  
County-City Building  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508



**RE: Submittal of Revised Text Amendments to Section 27.31 (B-2 Zone) and  
Section 27.37 (B-5 Zone) of the Lincoln Municipal Code**

Dear Marvin:

Our law firm represents Ridge Development Company and Southview, Inc. regarding proposed revisions to the B-2 and B-5 zoning text concerning on and off premises alcohol beverage sales. We want to acknowledge the City Administration's effort to process a Special Permit Ordinance Amendment which removes the possibility to mitigate and reduce the 100 foot spacing requirement for liquor establishments. We support the Administration's effort to eliminate this cumbersome mitigation provision.

Similarly, we have enclosed revised language to our proposed B-2/B-5 text amendments, clarifying that the proposed spacing and separation provisions are not waiveable by the City Council. We have obtained Rick Peo's advice on how to best incorporate the nonwaiveable provision in the proposed B-2/B-5 text amendments. We have also clarified that "park land" would not include trails. In addition, we have incorporated the drive-through window and outside amplified sound prohibitions found under subparagraph (e) and (f) in Section 27.63.680 and Section 27.63.685. The other provisions of Section 27.63.680 and Section 27.63.685 are already covered by the use permit provisions. Furthermore, the other provision are not presently required since the present B-2 and B-5 ordinance only incorporates Section 27.63.680 and Section 27.63.685. "locational" requirements.

The enclosed B-2/B-5 text amendments complement the City Administration's efforts to protect residential areas. The following are additional justifications for our proposed B-2/B-5 text amendments in light of the City Administration's proposed Special Permit Ordinance Amendment:

1. While the City Administration's Special Permit Ordinance Amendment removes the mitigation/waivable provision from the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zones, the City Administration's Amendment fails to remove the waivable provision from the B-2 and B-5 zones. Adoption of our enclosed revised language would similarly prevent the B-2/B-5 zones separation standards from being mitigated or waived by the City Council.

2. The commercial special permit zones are generally found next to the older residential areas, while the B-2 and B-5 zones are generally located next to the newer residential areas. The older residential areas generally have smaller block lengths, less residential spacing separation and more street connectivity between the residential and commercial areas. A one size fits all spacing separation standard fails to acknowledge the unique differences in urban form. The City Administration's effort to process a Special Permit Ordinance Amendment addresses the older neighborhood urban form, while our proposed B-2/B-5 text amendments properly address the newer neighborhood urban form pattern.

3. B-2 and B-5 zones have much larger front, side and rear yard setbacks than the special permit zones (B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3). For example the B-2 and B-5 rear yard setbacks next to a residential area are 50 feet and 100 feet respectively, while the B-1 and B-3 zones are generally 30 feet.

4. Many of the negative impacts on neighborhoods result from the liquor establishment's patrons parking next to the residential areas. Intoxicated patrons tend to make louder noises or do unsightly activities near the residential areas while getting into their cars to leave. The B-1 and B-3 side yard separation for residential areas is only ten feet and five feet respectively. Consequently, parking (and the possible parking issues related to intoxicated patrons) is permitted only ten feet and five feet from residential areas in the B-1 and B-3 zones respectively. Our proposed B-2 ordinance amendment increases the side yard setbacks for liquor establishments from 20 feet to 50 feet. This change not only creates a larger liquor establishment separation from residential areas, it also would increase the parking stall separation from 20 feet to 50 feet, thus increasing neighborhood protections.

5. All the current commercial zone ordinances allow parking stalls in the required rear yard. Our text amendment would prohibit parking stalls in the rear yard behind liquor establishments. Therefore, the larger B-2 and B-5 rear yard setbacks will now apply to both buildings and parking stalls. Our proposed B-2 and B-5 ordinance amendments will extend the liquor building separation to also apply to patron parking, leading to greater neighborhood protections.

6. B-2 and B-5 zones are the only zones that permit alcoholic beverage sales for consumption on and off the premises "by right" assuming there is an approved use permit. The other zones require special permit approval which means the City Council



must find that alcoholic beverage sales with conditions adequately (i) protect the neighborhood and (ii) the surrounding area is not detrimentally harmed. The City Council has made a prior public policy decision to acknowledge the two types of urban form and require B-2 and B-5 to have larger yard setback requirements. The B-2/B-5 zones are the only non-downtown zones where alcoholic beverage sales are permitted without a special legislative finding that the surrounding neighborhood is protected or the surrounding area is not detrimentally harmed.

Based upon this rationale, we believe the enclosed B-2/B-5 text amendments complement the City Administration's efforts to protect residential areas. Please call if you have questions or need additional information. We appreciate your consideration of our proposed zoning text amendments.

Very truly yours,



Kent Seacrest  
For the Firm

Enclosure (Revised B-2 and B-5 Text Amendments)

cc: Mayor Seng  
City Council Members  
Mark Bowen  
Ann Harrell  
Rick Peo  
Brian Will, Planning Department (hand deliver)  
Carol Brown, Chair of the Mayor's Neighborhood Round Table  
Nebraska Restaurant Association  
Nebraska Grocery Store Association  
Ridge Development Company  
Southview, Inc.

## PROPOSED REVISIONS TO B-2 ZONING TEXT

### L.M.C. Section 27.31.030 Permitted Uses

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~~(z) Sale of alcoholic beverages for consumption on the premises, provided the locational requirements of Section 27.63.680 have been met or waived by the City Council;~~

~~(aa) Sale of alcoholic beverages for consumption off the premises, provided the locational requirements of Section 27.63.685 have been met or waived by the City Council;~~

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### L.M.C. Section 27.31.040 Permitted Conditional Uses

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(f) Sale of alcoholic beverages for consumption on the premises:

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met; provided that the side yard adjacent to such building shall be 50 feet.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard adjacent to the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care facility, church, state mental health institution, dedicated city or county park land, or residential district.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept open or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.31.100(h), the yard requirements, parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

(g) Sale of alcoholic beverages for consumption off the premises

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met; provided that the side yard adjacent to such building shall be 50 feet.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard adjacent to the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care

facility, church, state mental health institution, dedicated city or county park land, or residential district.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.31.100(h), the yard requirements, parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

## PROPOSED REVISIONS TO B-5 ZONING TEXT

### L.M.C. Section 27.37.020 Permitted Uses

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~~(16) Sale of alcoholic beverages for consumption on the premises, provided the locational requirements of Section 27.63.680 have been met or waived by the City Council;~~

~~(17) Sale of alcoholic beverages for consumption off the premises, provided the locational requirements of Section 27.63.685 have been met or waived by the City Council;~~

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### L.M.C. Section 27.37.025 Permitted Conditional Uses

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#### (c) Sale of alcoholic beverages for consumption on the premises:

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard of the building containing the licensed premises that abuts a residential district.

#### (3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care facility, church, state mental health institution, dedicated city or county park land, or residential district. For purposes of this section, "park land" shall not include trails.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.37.070(i), the yard requirements, the parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

(d) Sale of alcoholic beverages for consumption off the premises

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard of the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care

facility, church, state mental health institution, dedicated city or county park land, or residential district. For purposes of this section, "park land" shall not include trails.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.37.070(i), the yard requirements, the parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

EXHIBIT A

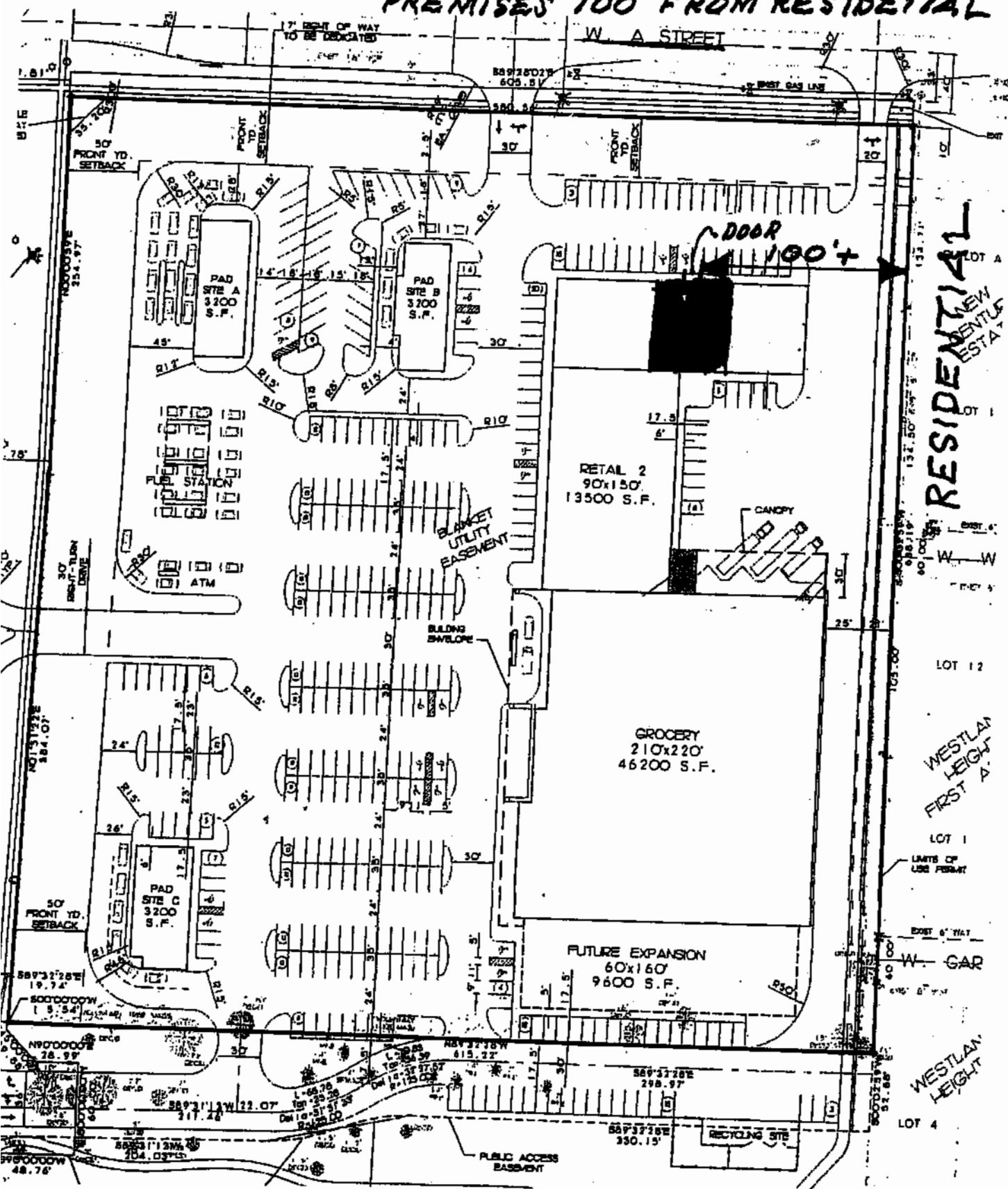
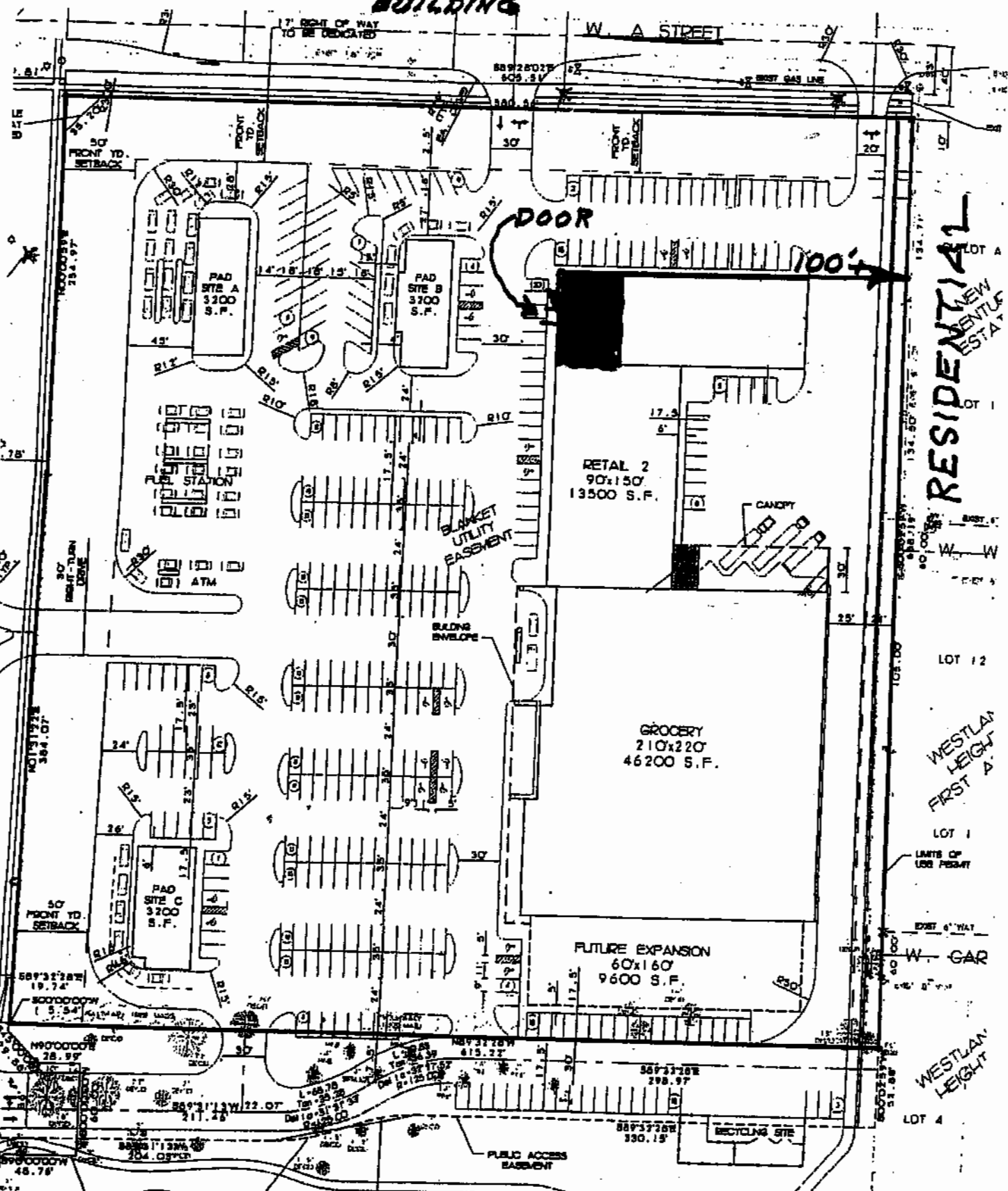




EXHIBIT B

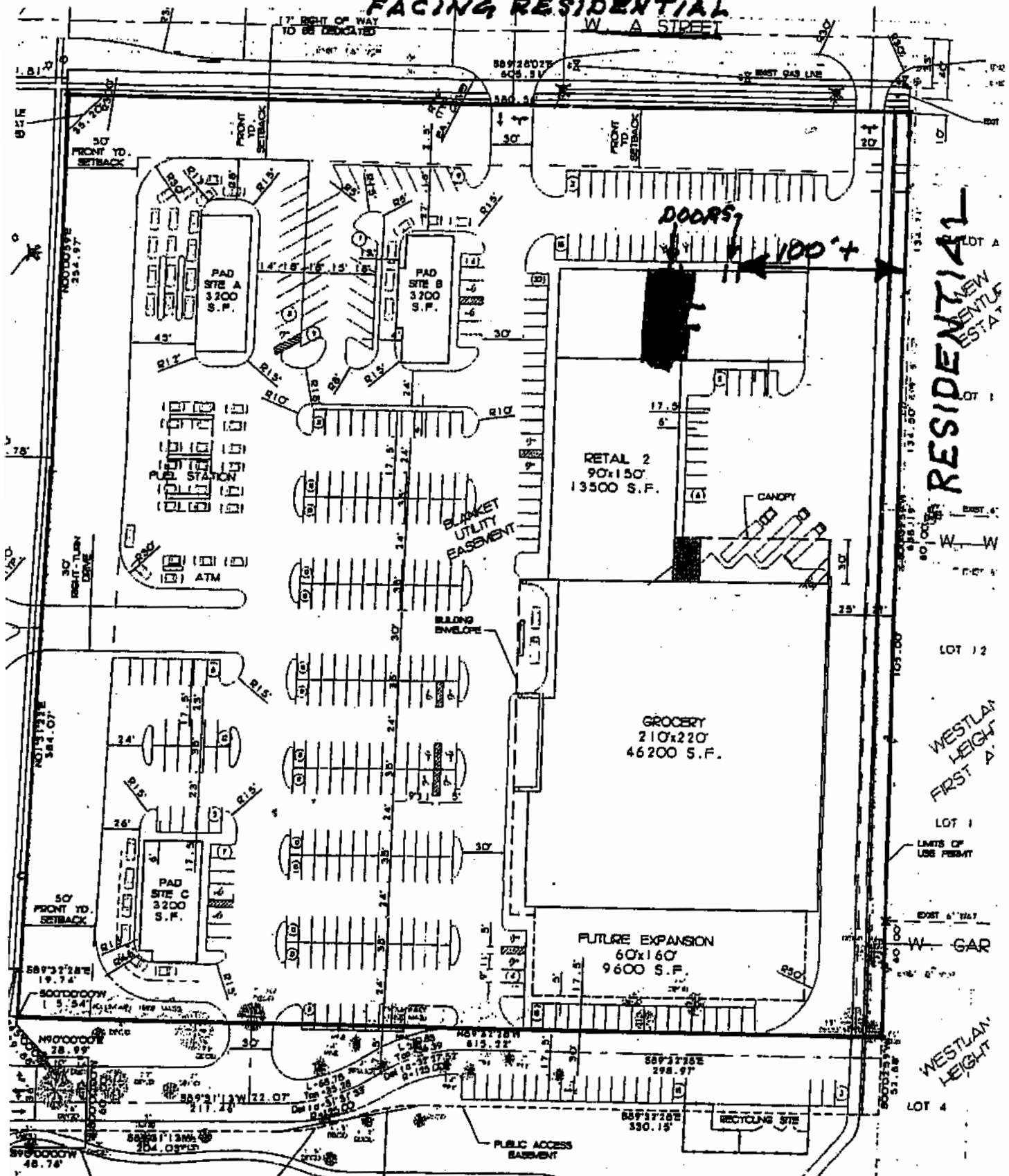


# SEACREST PROPOSAL

## SITUATION C

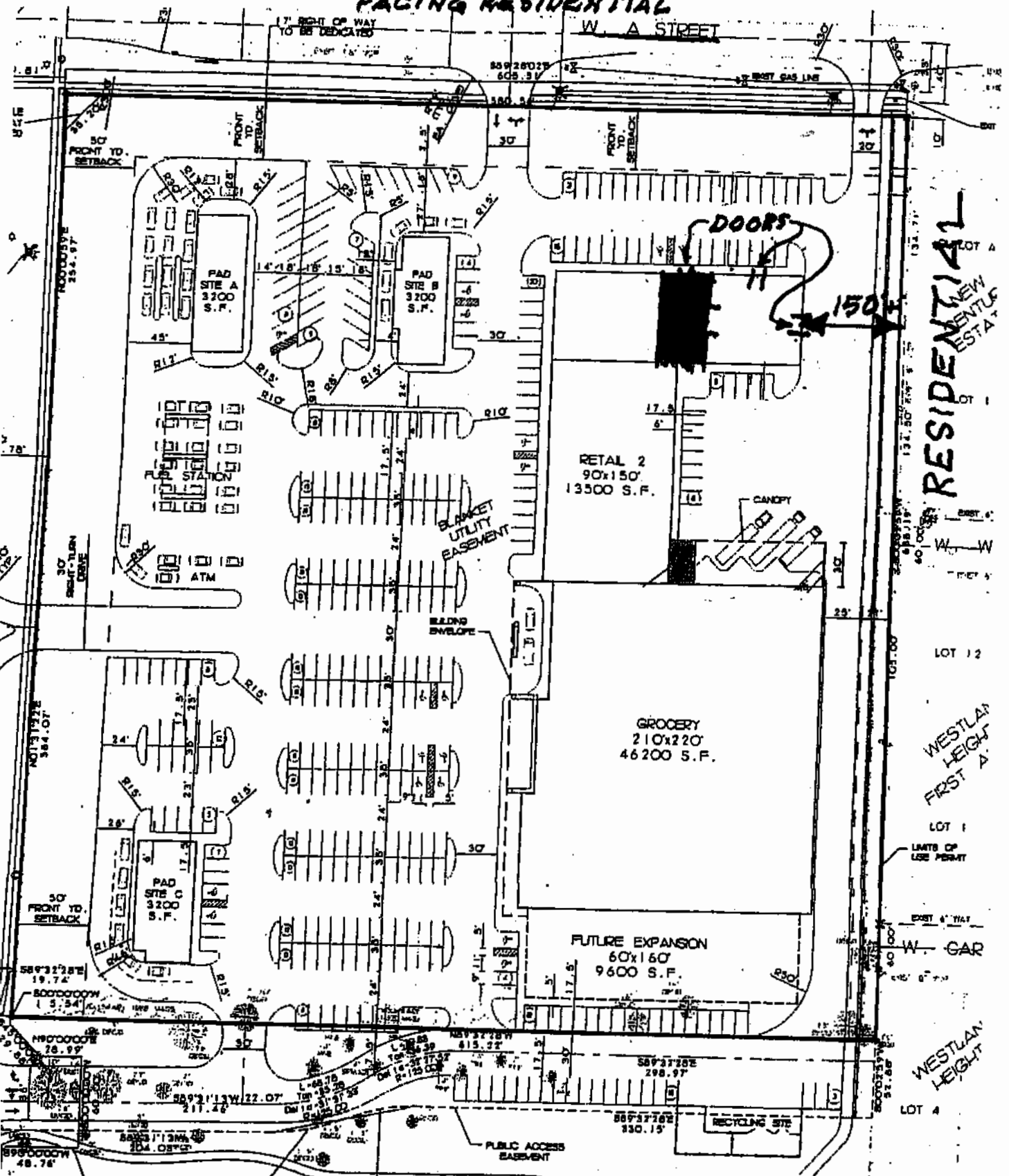
### OPENING BETWEEN PREMISES AND NON PREMISES DOOR NOT FACING RESIDENTIAL

EXHIBIT C



# SEACREST PROPOSAL SITUATION D OPENING BETWEEN PREMISES AND NON PREMISES DOOR FACING RESIDENTIAL

EXHIBIT D

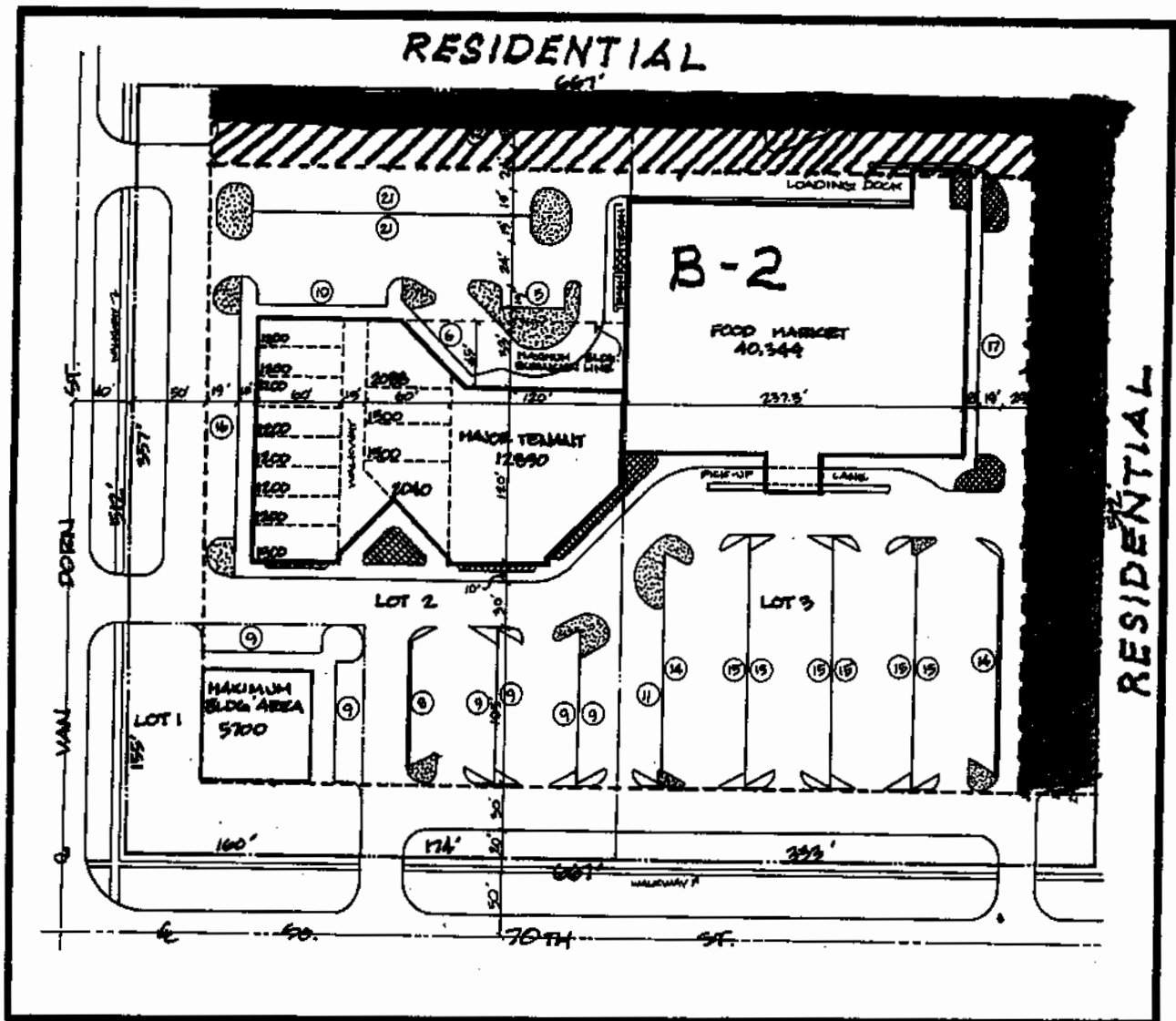


## USE PERMIT

TO DEVELOP A 'B-2' ZONED PROPERTY AS DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION,  
IN LINCOLN LANCASTER COUNTY, NEBRASKA.

## SEACREST PROPOSAL

////// SIDE YARD 50' (NO PARKING)  
 //// REAR YARD 50' (NO PARKING)



REQUIRED YARD WHEN  
 ABUTTING RESIDENTIAL

SIDE YARD 20' (NO PARKING)

REAR YARD 50' (PARKING ALLOWED)

